IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICGTION

CRIMINAL APPEAL NO. 128 OF 1994

Raghunath Anna Patil ... Appellant.

vs.

The State of Maharashtra .... Respondent

Mr. M. S. Mohite with Mr. V.S. Thokal for appellant.
Mr. A. S. Shitole A. P. P. for respondent

CORAM: **A. S. AGUIAR J.**

Date: July 13, 2004

ORAL JUDGMENT:

1. This is an appeal from order dated 21st January 1994 passed by the Special Judge, Sangli, under the Prevention of Corruption Act, whereby the appellant has been convicted and and sentenced for the offence under section 7 read with section 13 (1)(d) and 13(2) of the Prevention of Corruption Act and sentenced to suffer R.I. for one and half years and to pay a fine

of Rs.500/- and in default of payment of fine to further undergo R.I. for three months on each count. Both the sentences are directed to run concurrently.

2. According to the prosecution the accused, a police constable attached to Sangli City Police station, a public servant, is charged with abusing his position as a public servant by demanding and accepting illegal gratification from the complainant. The accused is alleged to have made the demand for bribe or illegal gratification for the first time on 20th March 1989 and thereafter repeated the same on 21st March 1989 and again on the day of the trap i.e. on 23rd March 1989, when the trap money of Rs.100/- was recovered from him.

3. It is the prosecution case that on 20.3.89 at about 10 a.m., there was a quarrel between the complainant and one Sameer Patil as the said Sameer Patil rested his leg on the hand cart of the complainant who was a soda water vendor. The said quarrel led to a scuffle and a complaint came to be filed which was recorded as N.C. Subsequently a compromise was arrived at

between the complainant and the said Sameer at the intervention of the family members. Hence on the very day the complainant at about 7.30 hrs., went to the police station and asked for withdrawal of the said N.C. which he had lodged against said Sameer and informed the officer concerned that the matter was settled. However, the police officer got annoyed and abused and threatened to involve, both the complainant and the said Sameer in some offence. When the complainant came out of the police station he was accosted by the accused with whom he was acquainted. The accused told the complainant that he would get his case settled and withdrawn if he paid Rs.100/-. The complainant told the accused that he did not have the money but would arrange the same on the next day . Accordingly on 21.3.89 in the evening the complainant closed his shop and met the accused outside the police station. When he was asked by the accused as to what he had done about the money, the complainant informed him that he had not yet obtained the money and he would raise the money by selling sodas. The accused told the complainant to get the

amount of Rs.100/- on Thursday i.e. 23rd March 1989 in the morning and on being paid the amount he would have the complaint torn. On 22nd March 1989 the complainant went to the ACP office at Sangli and lodged his complaint against the accused.

4. On 23.3.1989 the complainant accompanied by two panchas and the raiding party went to Sangli Police Station. Before entering the police station the complainant switched on the tape. On entering the police station he met the accused who then told the complainant to sit in the police canteen. The accused showed them the carbon copy of the complaint which was in his shirt pocket (uniform). After having tea in the canteen they all went to Jamdar's pan stall, opposite City Police Station, Sangli, for taking pan. The complainant then informed the accused that he had brought Rs.100/- and asked the accused to destroy the complaint. The accused then removed the carbon copy of the complaint and tore the same into pieces which he kept in the pocket of his pant. The accused then by

gestures asked the complainant to make the payment. The complainant removed the marked notes and gave them to the accused. The accused on seeing that the notes were powdered , kept the notes below the paper of Mawa in his left hand and closed his wrist. Immediately on getting the pre-arranged signal from the complainant the raiding party came to the spot and apprehended the accused. On seeing the police the accused threw the notes and paper containing mawa on the road. The spot where the notes were lying, the paper, uniform on the person of the accused and the hands of the accused were checked under ultra violet lamp and anthracene powder was detected on the paper, the left palm and over the right hand finger of the accused and near the 4th and 5th button of his uniform. Thereafter the police party went to the police station and recorded the post trap panchanama. Further investigation was carried out and statement of witnesses recorded. The conversation recorded on tape was transcribed. After obtaining sanction to prosecute the accused from the Superintendent of Police, Sangli, the accused was chargesheeted before the

Special Court. Charges were framed against the accused and explained to him. The accused denied his guilt and claimed to be tried.

5. In support of its case the prosecution has examined the complainant P.W. 1 Suresh Patil, P.W. 2 API Shivram Shimpugude, who recorded the complaint, PW 3 panch Gulamhusen Mushariff, who was with the complainant at the time of trap. P.W. 4 Gulabrao Dharmu Pol the sanctioning authority, and P.W. 5 API Maruti Dafale and P.W. 6 Sarjarao Mokashi who were the Investigating Officers.

6. From the case of the prosecution it seems that there were demands for bribe made by the accused on three different occasions, the first being on 20.3.90 when the accused met the complainant outside the police station where the complainant had gone for withdrawing the complaint against Sameer and the accused told the complainant that he could get the complaint destroyed if he was given Rs.100/-. The next demand

was on 21.3.89 when the complainant was passing by the police station the accused called out to him and asked him about the money and the complainant told him that he was not in a position to pay the money on that day but promised to pay it after a few days. The third demand was on the day of the trap i.e. on 23.3.89.

7. It is the defence of the accused / appellant that no case for demand of bribe by the accused has been made out. In fact no evidence whatsoever is produced so far as the first and second demands are concerned. The complainant has nowhere in his evidence referred to the first two demands allegedly made by the accused. In fact in his evidence in chief the complainant has denied that the accused had demanded Rs.100/- from him as consideration for tearing the complaint. It is the prosecution case that these two demands are mentioned in the FIR which was recorded by P.W. 5. In his examination in chief P.W. 1 has clearly resiled from his complaint and seems to be suffering from complete amnesia so far as the demand, and acceptance

of Rs.100/- by accused from him, at the pan shop is concerned. In view of the hostile nature of his evidence, the complainant P.W. 1 was cross examined by the APP. However, in his cross examination the complainant has again denied that instructions were given to him by the ACB to pay the bribe amount only after the demand and to signal to the raiding party. Thus the prosecution case which is based only on the complaint -FIR but not supported by the complainant P.W. 1 who has become hostile to the prosecution case, cannot be sustained.

8. The learned trial judge however, relying only on the evidence of the panch witness P.W. 3 has thought it fit to convict the accused basing his decision on the judgment in the case of *Vasant Maruti Waikar vs. State of Maharashtra*, reported in 1991 Mh. L. J. 1318 requiring the court to draw adverse inference against the accused as he has benefited by the witnesses turning hostile to the prosecution case. In the aforesaid case the court has held, “In a case where a witness or more than one of them turns hostile, the Court will have to take judicial notice of

the fact that the only beneficiary of such a situation is the accused and consequently an appropriate adverse inference will follow. Unless an attempt has been made to tamper with the evidence, a witness will not completely resile from his earlier statement , and such efforts can only be traced back to the beneficiary of such a corrupt practice". I am afraid I cannot agree with the reasoning of the trial court. In the case cited above although the complainant Sakhalchand has turned hostile to the prosecution case there were other witnesses whose evidence substantiated the prosecution case. In that case there are several other witnesses who have deposed to the facts of the complaint lodged by Sakhalchand, including the Judicial Magistrate, before whom the complaint was lodged, who stepped into the witness box and deposed about the filing of the complaint by Sakhalchand before him and also about the meetings which the accused had with him on two dates. In the present case it is only the evidence of the panch that the trial court has relied upon for convicting the accused, despite the complainant himself having turned hostile. The evidence of the

panch witness could never be used as substantive evidence as it only corroborates the panchanama and can not corroborate the complaint which has been in fact resiled from, by the complainant. Further more, in the case noted above there is clear evidence to show that there was pressure and inducement upon the complainant to withdraw the complaint. In the present case there isno such evidence of any inducement or pressure put upon the complainant to withdraw the complaint. Even in his cross – examination the complainant, after being declared hostile, has not supported the complaint.

9. In a case of corruption it is settled law that the complainant is to be treated as an accomplice and therefore his evidence cannot be accepted by itself without corroboration. In the present case the complainant has turned hostile to the prosecution case which is based on the complaint -FIR and the conviction is sought to be sustained only on the evidence of the panch witnesses as corroborating the FIR. The evidence of the Investigating Officer and of the panch witnesses is sought to be used as evidence corroborating the FIR. It is well settled that

FIR by itself is only a corroborative piece of evidence and no conviction can be based only on FIR if the complainant resiles from his complaint. In the present case the complainant in his testimony has not only not made reference to the first two demands but in fact even on the question of third demand, which was allegedly made on the day of the trap, the evidence of the complainant shows that in fact there was no demand made by the accused and it was the complainant himself who after informing the accused that he had brought Rs.100/-, handed over the packet containing marked currency notes totaling Rs.100/-, to the accused. It is in the evidence of the complainant that on seeing that the packet containing the currency notes and smeared with anthracene powder, accused immediately threw the packet down and it was only when the raiding party came, after receiving the pre- arranged signal from the complainant and apprehended that the accused, at the behest of the Officer picked up the packet containing currency notes as well as other packet containing '*mawa*'.

10. So far as proving the trap is concerned it is in the evidence of P.W. 1 that after the accused was made to pick up the notes lying on the road they all went to the police station where the hands of the accused were tested with the help of ultra violet lamp. No tests were carried out nor panchanama drawn on the spot as at that time there was a procession on the road in front of the pan shop. Even the evidence of the defence witness no.1 Mohammad Yusuf Jamadar shows that after the raiding party made the accused to pick up the notes they all went to the police station. Similarly panch witness P.W. 3 has stated that the hands of the accused were checked at the police station and not on the road. The evidence of the panch to the effect that the spot where the notes were lying on the road, the dress and the hands of the accused were checked at the spot under ultra violet lamp is nullified by his subsequent statement that the hands of the accused were checked in the police station under ultra violet rays. The fact that at that time there was a procession passing in front of the pan shop would have rendered it difficult if not impossible for the police to have carried

out the post trap procedures at the spot of trap.

11. The case of the prosecution that the trap was laid on 23rd March 89 also appears doubtful in view of the testimony of the complainant that on 22nd March 1989 he lodged his complaint with the ACB and was told to come to the office two days later with the trap amount , which would be 24th March 1989. This makes it doubtful whether the trap was laid on 23rd or 24th.

12. In view of the complainant completely resiling from his complaint and the discrepancies in the evidence of the panch witness to the trap, the prosecution has failed to make out its case of demand and acceptance of bribe by the accused.

13. Apart from the aforesaid infirmities in the prosecution case the conviction of the accused also requires to be set aside on the basis of the well known legal maxim *de minimis non curat lex* – the law does not concern itself with trifles. In the present case the accused is alleged to have demanded and accepted a

paltry sum of Rs.100/-. The sanctioning authority ought to have considered whether it was worth its while to prosecute the accused, a public servant, for accepting such a paltry amount considering the time, energy and effort that is required to be put in to prove the case or instead direct adoption of departmental proceedings to punish the accused.

14.This court in the case of *Bhagwan Jathya Bhoir vs. The State of Maharashtra* reported in 1992 Cri. L. J. 1144 has relied upon the decision of the Supreme Court in the case of *Veeda Menezes vs. Yusuf Khan* reported in AIR 1966 S.C. 1773 : (1996 Cri. L.J. 1489) wherein the *Doctorine of Triviality* has been discussed. The question is whether the sanctioning authority should treat the acts complained about as an “offence” when the law clearly states that trivial acts are not to be treated as offences. The institution of a prosecution in such a case would clearly not be appropriate.

15.In the present case had the sanctioning authority applied its

mind that this was just an isolated case and not the case of a habitual offender he could have ordered disciplinary proceedings against the employee and punishment commensurate with the offence could have been awarded in the disciplinary proceedings instead of a lengthy criminal prosecution, requiring the State to undergo heavy expenses, untold efforts and years spent in launching the prosecution and obtaining a conviction.

16. In the result the appeal is allowed and the conviction and sentence passed against the appellant/ accused is set aside. Bail bond of the accused stands cancelled. Fine, if paid, shall be refunded to the appellant.

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